

Resolution 21-036

**DECLARING EVENTS OF DEFAULT FOR CONTRACT NO. 35 REBID II – RVRSA  
ROCKAWAY RIVER REGIONAL INTERCEPTOR BOONTON SECTION  
REPLACEMENT PROJECT  
AND TERMINATING CONTRACT NO. 35 REBID II FOR CAUSE**

**WHEREAS**, on January 9, 2020, the Rockaway Valley Regional Sewerage Authority (“RVRSA”) awarded Contract No. 35 Rebid 2 – “Rockaway River Regional Interceptor Boonton Section Replacement Project” to Kulpeksa Land Improvement Corporation, having a business address of 248 Franklin Avenue, Rockaway, New Jersey 07866 (“Kulpeksa” or the “Contractor”) as the lowest responsible bidder in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., having submitted a bid in the amount of \$1,222,350.00, subject to authorization to award by NJDEP, pursuant to Resolution 20-007 (the “Contract”); and

**WHEREAS**, NJDEP subsequently issued the authorization to the award the Contract to Kulpeksa; and

**WHEREAS**, the Contract included bypass piping of flow, utilizing the extension of the existing siphon and utilizing existing bypass system located in the Monroe Street Pump Station, for the installation of a siphon outlet chamber, a manhole and 140-feet of piping across Washington Avenue; and

**WHEREAS**, on August 13, 2020, RVRSA authorized the execution of Change Order No. 1 in the amount of \$109,871.79 and a 45-day non-compensable time extension to Kulpeksa for a different method of bypassing flow and associated appurtenances, together with the installation of a manhole in Canal Park as further detailed in a memorandum from RVRSA’s consulting engineer, Mott McDonald, dated August 10, 2020; and

**WHEREAS**, on January 14, 2021, RVRSA terminated the Contract for convenience

pursuant to Resolution No. 21-015, with the exception of the remaining work referenced as Schedule A to said Resolution, which was required to be completed by the Contractor no later than February 1, 2021; and

**WHEREAS**, the work attached as Schedule A1 to this Resolution, which was required to be completed by February 1, 2021, was not completed by the Contractor; and

**WHEREAS**, Article XLIII entitled "Right of the Owner to Terminate Contract or Give a Three (3) Day Deficiency Notice" states, in relevant part:

In the event of any material delay or default in the performance of any of the provisions of the Contract Documents by the Contractor, or by any of his Subcontractors (of any tier) the Owner may serve written notice upon the Contractor and the surety(ies) of its intention to terminate the Contract, such notice to contain the reasons for the Owner's intention to terminate the Contract, and unless within ten (10) days after the serving of such notice upon the Contractor, such delay or default shall cease or arrangements for the correction and cure of the delay or default satisfactory to the Owner shall be made, the Owner may, upon the expiration of said ten (10) days, terminate the Contract. In the event of any such termination, the Owner shall immediately serve notice thereof upon the Contractor and the surety(ies) and the surety(ies) shall have the right to take over and perform the Contract; provided however, that if the surety(ies) do not commence performance of the Contract within ten (10) days from the date of the mailing of such surety(ies) of the notice of termination and correct and cure such delay or default or make arrangements for the correction and cure of the delay or default satisfactory to the Owner, the Owner may take over the work and prosecute the same to completion by contract or by force account for the account of and at the expense of the Contractor and may deduct the cost thereof from the payment then or thereafter due to the Contractor, and the Contractor and the surety(ies) shall be liable to the Owner for any excess cost caused to the Owner thereby, and in such event the Owner may take possession of and utilize in completing the work, such of the Contractor's materials, equipment appliances, and plant as may be on the site of the work and necessary or convenient therefor.

In addition to and not in lieu of the termination remedy provided above or any other remedy the Owner may have, if the Contractor or Subcontractor (of any tier) should fail or neglect at any time to prosecute the work properly or fail to perform any provision of the Contract Documents, the Owner may give a three (3) day written deficiency notice. The Owner, after three (3) days from service of the three (3) day deficiency notice to the Contractor, may make good such deficiencies for the account of and at the expense of the Contractor and may deduct the cost thereof from the payment then or thereafter due to the Contractor and the Contractor and the surety(ies) shall be liable to the Owner for any excess cost



caused to the Owner thereby; and

**WHEREAS**, the Contractor has defaulted in the performance of the Contract for failing to complete the work set forth in Schedule A1 by February 1, 2021; and

**WHEREAS**, the Contractor has outstanding lien claims from subcontractors or suppliers, including, HOBAS Pipe USA (“HOBAS”) and Pumping Services, Inc.

**NOW, THEREFORE, BE IT RESOLVED** by the Rockaway Valley Regional Sewerage Authority as follows:

1. The Contractor shall be provided with the ten (10) day notice of RVRSA’s intention to terminate Contract No. 35 Rebid II – “Rockaway River Regional Interceptor Boonton Section Replacement Project” for the Contractor’s default in the performance of the Contract for failing to complete the work set forth in Schedule A1 by February 1, 2021 and due to outstanding lien claims in accordance with Article XLIII of the Contract.

2. If the work set forth in Schedule A1 is not completed to the satisfaction of RVRSA within ten (10) days after serving the aforementioned notice to the Contractor, Contract No. 35 Rebid II “Rockaway River Regional Interceptor Boonton Section Replacement Project” is terminated and the surety, Cincinnati Insurance Company, should be notified to complete the same within ten (10) days of mailing such notice in accordance with Article XLIII of the Contract and in the event the surety fails to comply with the same, RVRSA may take over the remaining work and prosecute the same to completion at the expense of the Contractor in accordance with Article XLIII of the Contract.

3. In the event that RVRSA receives: (1) receipts and proof of payment from the Contractor to HOBAS in the amount of \$83,760.24 and RVRSA receives HOBAS’s Affidavit,

Final Waiver of Municipal Mechanic's Lien and Release for Contract No. 35 Rebid II in a form that is satisfactory to RVRSA's counsel; (2) receipts and proof of payment in full from the Contractor to Peerless Concrete Products Co. for the Siphon Outlet Chamber; (3) affidavit from the Contractor of payment in full to all subcontractors and suppliers and release of all municipal mechanics' liens to RVRSA; and (4) the maintenance bond and environmental maintenance bond required by Contract No. 35 Rebid II, then in that event, the Contractor shall be paid \$83,760.24 from money's that were withheld by RVRSA from Payment Application No. 3 due to Contractor's failure to make payment to HOBAS after RVRSA had previously paid Contractor \$83,760.24 for the delivery of HOBAS pipe and the Contractor shall be paid the amount set forth in Payment Application No. 4, attached hereto .

4. The Contractor, Cincinnati Insurance Company (the surety) and NJDEP shall be provided with a copy of this Resolution.

5. The Executive Director, staff and consultants of RVRSA are hereby authorized to take all other actions necessary or desirable to effectuate the terms and conditions of this Resolution.

6. This Resolution shall take effect immediately.

#### **CERTIFICATION**

I do hereby certify that this Resolution was adopted at a regular meeting of the Rockaway Valley Regional Sewerage Authority held on **February 11, 2021**.

on motion of: Commissioner Andes

second by: Commissioner Corbett

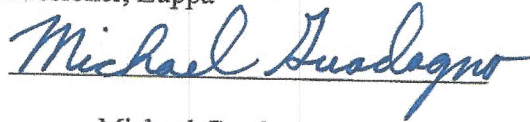
ROLL CALL VOTE:

YEAS: (6) Andes, Corbett, Farrell, Guadagno, Isselin, Schorno

NAYS: (0)

ABSTAIN: (1) Recchia

ABSENT: (3) Cegelka, Borough of Rockaway Commissioner, Zuppa

A handwritten signature in blue ink that reads "Michael Guadagno". The signature is fluid and cursive, with the first name "Michael" and last name "Guadagno" clearly distinguishable.

Michael Guadagno  
Board Secretary